Mini-Togs, Inc.; Luv-N-Care, Inc.; and Embroideries, Inc., a single employer *and* United Steelworkers of America, AFL–CIO–CLC. Case 15–CA–10742–1

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND RAUDABAUGH

On August 31, 1990, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

1. We agree with the judge's finding that the Respondent's distribution to employees of forms to be used in revoking union authorization cards violated Section 8(a)(1) of the Act. We make this finding in light of all the conduct surrounding the distribution of withdrawal request forms. We also rely on the fact that the forms were distributed after Hakim's October 17 speech that included threats of discharge and plant closure in violation of Section 8(a)(1), and that the forms were distributed so that the Respondent could ascertain who accepted the form; this procedure foreseeably could cause some employees to take a form out of fear of retribution.[3] Furthermore, the forms suggested that a copy be given to the Respondent, implying that the Respondent would know which employees executed such a form. The Respondent cites *R. L. White Co.*, 262 NLRB 575 (1982), for the proposition that distributing card revocation forms is not always illegal. We do not disagree, but we find that case inapposite here. In *R. L. White*, the employer, after giving a lawful speech, made information available for employees to use if they chose, without any attempt to ascertain whether employees would make use of it. Here, in contrast, as the above recitation of facts makes clear, the distribution of revocation forms took place in a coercive atmosphere with the added feature that the Respondent might gain knowledge of which employees repudiated their cards and which did not.

2. The judge found that the Respondent seized on Alice Faye Washington's use of obscene language on October 28 as a pretext for ridding itself, on October 31, of an outspoken union advocate, in violation of Section 8(a)(3) and (1) of the Act. Alternatively, he found that, even if Respondent discharged Washington for her use of obscene language, the discharge would be unlawful under Section 8(a)(1). In so concluding, he relied on the proposition, applied in *Postal Service*, 250 NLRB 4 fn. 1 (1980), and cases there cited, that an employee's utterance of ''obscenities'' as ''part of the *res gestae* of concerted protected activity'' does not, per se, constitute conduct ''so flagrant or egregious'' as to remove the concerted activity from the protection of the Act. The Respondent excepts to both findings. We affirm.

The Respondent does not deny knowledge of Washington's union sympathies and her activities in the Union's behalf. It argues instead that she was discharged solely for directing profane and defamatory language at other employees, in violation of its posted rule prohibiting ''provocative statements.''[4] It distinguishes such conduct from the mere use of profanity, which it acknowledges occurred in its plant on a regular basis and which the judge found to be the Respondent's asserted ground for discharge. It argues that Hakim's testimony that directing offensive language at others would result in discipline while the mere use of such language would not, and his testimony that in the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We specifically reject the Respondent's contention that the judge incorrectly discredited the testimony of Willis Bradshaw concerning the timing of the layoffs of six inspectors. Even were we to interpret Bradshaw's testimony in the manner advocated by the Respondent, we would still find that it inadequately explains the timing of the layoffs in view of the judge's primary reliance on the inconsistencies in the related testimony of Acting President Hakim and the residual contradictions in Bradshaw's testimony.

Additionally, the Respondent asserts that the judge's findings are a result of bias. After careful examination of the entire record, we are satisfied that this allegation is without merit.

The judge discredited the testimony of employee McHenry that Supervisor Hemphill informed her that inspectors were discharged because some of them had attended a union meeting, and the testimony of McHenry and employees Miller and Deiter concerning remarks they attributed to Hemphill in a confrontation on September 16. Notwithstanding these credibility findings, in two instances in sec. II,B,2 of his decision, the judge refers to purported disclosures of knowledge of union activity by Hemphill that are inconsistent with such findings. The judge's error, however, is inconsequential because of credited testimony regarding an admission of unlawful motive by Supervisor Standifer, which was also cited in the same two instances.

In the second and fourth paragraphs of sec. II,C of his decision, the judge incorrectly stated that Bradshaw spoke to Greenhagen and her colleagues, instead of stating that Bradshaw spoke only to Brenda McHenry, Opal Deiter, and Karen Miller. That error does not affect the result.

No exceptions were taken to the judge's dismissal of certain complaint allegations and his findings of violations of Sec. 8(a)(1) in connection with the Respondent's October 17 speech given by Edward Hakim, the Respondent's acting president, to the employees.

[2] We correct the judge's inadvertent oversight in neglecting to include Eric Coler's name in the list of employees in par. 2 of the Conclusions of Law.

[3] We find merit in the Respondent's exception that the judge erred in stating that no employee had asked the Respondent for assistance in revoking a union authorization card. However, the Respondent's response primarily encompassed employees who had not requested such assistance.

[4] Admitted into evidence was a list of Respondent's rules. At the bottom of the list was the statement: ''any breaking of rules listed above may warrant immediate termination.''

past approximately six employees had been terminated and two suspended for similar conduct, rebuts the General Counsel's prima facie case of unlawful motivation (The Respondent concedes that a prima facie case was established.) In support of this argument, the Respondent argues that the judge was mistaken in declaring that the Respondent had not shown any instance of discipline for conduct like that of Washington.

The Respondent did submit instances of discipline in which profane or obscene language directed at others played a part. In all the examples it presented, however, the conduct being punished either included physical misconduct[5] or involved insubordination or disrespect to supervisors,[6] or involved one-on-one confrontations where one employee told another to ''move her ass.''[7] This last type of conduct arose in situations in which one employee's path was blocked by another. Given the confrontational nature of such situations, the use of the rough language amounted to more than profanity directed at another. It reinforced an implicit physical challenge, amounting almost to a veiled threat that force might follow if compliance were not forthcoming.[8]

[5] In one instance, an employee called another employee a ''whore.'' Hakim thought he had settled the matter and sent them back to work, but the insulted employee stabbed the other one with a pair of scissors. Both employees had to be arrested. In another instance a supervisor was called a ''f—ing bitch,'' and when she responded that she did not have to take such abuse, the employee broke a coke bottle and attempted to cut the supervisor with it. Thereafter, the employee was terminated.

[6] In one instance, an employee called Hakim a ''damned liar'' and Hakim personally terminated the employee. In another instance, an employee called a supervisor a ''bitch,'' causing the supervisor to refuse to give him his timecard, whereupon the employee twisted the supervisor's arm behind her back and threw her on the ground. She was taken to the hospital, and he was terminated and arrested. This is similar to the situation in which a supervisor was called a ''f—ker.'' The employee was fired, but permitted to return after a month and an apology. Later, the employee called the same supervisor a ''f—kin' bitch,'' used other inappropriate language, threw the supervisor to the ground, and was removed from the facility. There is also an instance involving what the employer characterizes as the use of the phrase ''f—in' bastard'' in a provocative way. An employee called Bradshaw a ''f—ing bastard'' and Bradshaw fired the employee, who was then removed from the premises by police. Finally, there is the example in which employee Melissa Blunt cursed her supervisor and was fired. The record does not reveal the language used.

[7] One of the Respondent's witnesses testified that employee Virginia Wiley had ''called somebody a bitch or told her to move her ass from the time clock,'' and that in a similar instance somebody told employee Fay Kendricks ''to move her ass or called her an ass.'' The perpetrators apologized and received ''two week or 30 day'' suspensions. Insofar as these accounts are unclear as to what actually was said, and they are part of the Respondent's affirmative defense, we shall construe any ambiguities in them against the Respondent. Thus, we find that in both instances employees were told to ''move their ass.''

[8] We note that this is distinguishable from discriminatee Eric Coler's alleged remark to Donita Key that she should move her ''fat ass'' and referring to her as ''a fat doughnut'' to another employee, who told Key of the uncomplimentary reference. The Respondent does not allege that Coler made the remark to Key in a serious or rough tone of voice. Rather, the Respondent alleges in essence that Coler was harassing Key by mocking her. However, the judge found that another employee, Ponsell, was only given warnings for twice harassing another employee. Thus, the judge concluded that the Respondent did not show that it would have discharged Coler absent his having signed a union card. Even if we were to construe these incidents as similar in kind to those described in fn. 7, we note that Coler was terminated, rather than suspended for his remarks about Key, which as noted, occurred in a nonconfrontational setting.

Washington's conduct was not like that involved in any of the instances cited by the Respondent. As far as the record shows, she was the first employee disciplined for the use of profane or offensive language directed at others where that language was not either directed at a supervisor or accompanied by actual or threatened physical misconduct. Moreover, some of her remarks simply expressed her opinion of antiunion propaganda (e.g., ''God-damned lies''), and cannot seriously be viewed as being directed towards others. Even the two instances that could be construed as being directed personally at employees—one in which she shouted ''You f—in' whores better stop putting these papers on my table unless I ask for one,'' when she found unsolicited antiunion literature on her sewing machine, and the other when she stood up at lunch the same day and proclaimed that those who distributed such literature to be ''f—ing whores''—appear to have been more in the nature of general announcements to her fellow employees as a group than messages directed to particular identified employees. As such, they manifested her displeasure at receiving unsolicited propaganda and her thought that antiunion efforts were of questionable morality. They were not in any sense a first step towards violence, nor did they involve physical misconduct, veiled threats, or insubordination.

Accordingly, although we do not condone the language used by Washington (albeit such language was common in the plant), we agree with the judge that it was seized upon as a pretext to discharge Washington in retaliation for her union activities.

In attacking the judge's alternative finding that Washington's obscenities were part of the res gestae of her protected concerted activity, the Respondent argues that she was not acting pursuant to authority conferred by coworkers, trying to induce group action, or involved in processing a grievance as was the employee in *Postal Service*, supra. Apparently it is the Respondent's position that, without the presence of at least one of these circumstances, no basis exists for finding that Washington engaged in concerted activities within the meaning of Section 7 of the Act. We find no merit in that position.

As the Supreme Court explained in *NLRB v. City Disposal Systems*, 465 U.S. 822, 831, 833 (1984):

> [Section] 7 itself defines both joining and assisting labor organizations—activities in which a single employee can engage—as concerted activities. [Footnote omitted.]
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> . . . .
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> When an employee joins or assists a labor organization, his actions may be divorced in time, and in location as well, from the actions of fellow employees. Because of the integral relationship among the employees' actions, however, Congress

> viewed each employee as engaged in concerted activity. The lone employee could not join or assist a labor organization were it not for the related organizing activities of his fellow employees.

In the present case, a number of employees had embarked on a union organizing campaign, and Washington joined in that campaign by, inter alia, objecting to the placement of antiunion literature and those who distributed it.[9] Thus, unless her use of obscenities and profanity in expressing her disapproval of antiunion employee activities was so flagrant or egregious as to cost her the Act's protection, her conduct would not warrant discipline. We find that her behavior was not sufficiently flagrant or egregious. The offensive element of her conduct consisted only of shouting epithets commonly used in the plant and making remarks that were unkind to others. Although, as noted earlier, we do not condone such remarks, we find that they were not so opprobrious in the context in which they were made as to place her beyond the Act's protection. See, e.g., *Postal Service*, supra, 250 NLRB at 6 (employee's use of term ''stupid ass'' did not remove Act's protection from activity otherwise within Sec. 7); *American Telephone & Telegraph Co*., 211 NLRB 782, 783 (1974) (same as to employee/union representative's shouting and questioning manager's intelligence); *NLRB v. Thor Power Tool Co*., 351 F.2d 584, 587 (7th Cir. 1965) (same as to grievance committeeman's use of term ''horse's ass'').

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Mini-Togs, Inc.; Luv-N-Care, Inc.; and Embroideries, Inc., a single employer, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[9] The employees who distributed the literature were, of course, also exercising a Sec. 7 right, the right to ''refrain'' from assisting a union. Such an employee's expression of objections to prounion literature would be equally protected by the Act.

Mark Kaplan, Charlotte N. White, and *Joseph B. Morton III, Esqs*., for the General Counsel.
David Hagaman Esq. (Clark, Paul, Hoover & Mallard), of Atlanta, Georgia, for the Respondent.
James A. Pepitone, of Baton Rouge, Louisiana, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Monroe, Louisiana, on March 29 and 30 and May 16 and 17, 1989. The charge was filed on November 21, 1988, and an amended charge was filed on December 28 1988.[1] The Acting Regional Director for Region 15 issued the complaint in this case on December 30. The complaint alleged that the Respondent, Mini-Togs, Inc.; Luv-N-Care, Inc.; and Embroideries, Inc., a single employer, violated Section 8(a)(1) of the National Labor Relations Act (the Act) by creating the impression among its employees that their union activities were under surveillance; threatening employees with plant closure and loss of employment because they supported the United Steelworkers of America AFL–CIO–CLC (the Union) by promulgating and maintaining a rule prohibiting solicitation and distribution by off-duty employees during nonworking time, interrogating employees regarding the union membership, activities, and sympathies; threatening employees with discharge or layoff because they supported the Union; and soliciting employees to withdraw their support for the Union. The complaint also alleged that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off and discharging employees because they supported the Union. The Respondent by its timely answer denied that it had committed the alleged unfair labor practices.

On careful consideration of the entire record, my observation of the demeanor of the witnesses as they testified, and after reading and considering the posttrial briefs I received from the General Counsel and the Respondent, respectively, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent concedes, and I find, that it consists of Mini-Togs, Inc.; Luv-N-Care, Inc.; and Embroideries, Inc., which are corporations, with offices and places of business at a common facility in Monroe, Louisiana, where they operate as a single integrated business enterprise and constitute a single employer within the meaning of the Act. Mini-Togs engages in the manufacture and nonretail sale and distribution of children's clothing and related products. Luv-N-Care engages in the manufacture and nonretail sale and distribution of baby bottles and related products. Embroideries provides nonretail embroidery services.

The Respondent admitted, and I find, that during the 12-month period ending on September 30, which was a representative period, the Respondent, in the course and conduct of its business operations described in the preceding paragraph, purchased and received at its Monroe, Louisiana facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Louisiana. The Respondent conceded, and I find, from the foregoing data, that it is, and has been at all times material to this case, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

In early September, the Union embarked on a campaign to organize the Respondent's employees. On September 8,

[1] All date are in 1988 unless otherwise indicated.

James A. Pepitone, the Union's representative, met with approximately 13 of the Respondent's employees at the Holiday Inn Holidome, in Monroe, Louisiana. At this meeting, employees signed authorization cards for the Union. Thereafter, the Union held a series of bimonthly meetings with the same and additional employees, at the same location.

The Union's supporters among the Respondent's employees formed an organizing committee and distributed prounion literature, and asked fellow employees to sign authorization cards for the Union. Early on the morning of October 20, the organizing committee distributed copies of a prounion flyer near the Respondent's plant to employees arriving for work. The flyer carried the signatures of the 13 employees on the organizing committee. In November and December, the Union filed the unfair labor practice charges in this case. The record did not reveal any further action either by the organizing committee or by the Union to achieve collective bargaining for the Respondent's employees.

The issues presented here include whether, in response to the union activity among its employees in September and October, the Respondent violated Section 8(a)(1) of the Act by: (a) creating an impression among its employees that it was keeping their union activities under surveillance; (b) threatening its employees with plant closure if they selected the Union as their collective-bargaining representative; (c) threatening employees by informing them that other employees had lost their jobs because of their union activity; (d) threatening employees with discharge because they support the Union; (e) promulgating, maintaining, and enforcing a rule prohibiting off-duty employees from soliciting and distributing on its premises, on the Union's behalf, during nonworking time; (f) interrogating its employees regarding their union membership, activities, and sympathy; (g) threatening employees with layoffs or plant closure if they selected the Union as their collective-bargaining representative; and (h) soliciting employees to withdraw their signed union authorization cards.

Further issues presented are whether the Respondent violated Section 8(a)(3) and (1) of the Act by terminating the employment of employees Irene Anderson, Opal Deiter, Hazel Mayes, Brenda McHenry, Karen Miller, Janice Reynolds, Lottie Shaw, Eric Coler, Patricia Gayden, and Alice Faye Washington.

B. *The Layoff of September 13*

1. The facts

On September 8, snap machine operator Karen Miller and sleeper line inspectors Opal Deiter and Brenda McHenry attended the union meeting at the Holidome and signed authorization cards for the Union. On September 12, Miller, Deiter, McHenry, and two other employees asked employee Hazel Mays if she wanted to attend a union meeting. Thereafter, Miller, Deiter, and McHenry became members of the Union's organizing committee. On October 20, at the entrance to the Respondent's plant, they distributed the flyer bearing their signatures as members of that committee.

On Tuesday, September 13, Supervisor Erma Antley called Karen Miller to her office and announced that Ed Hakim, who is acting president of Mini-Togs, and Antley's superior, had directed her to lay Miller off because of a lack of work. Antley remarked that as Miller had been absent from work 2 weeks earlier because she had the flu, she was the logical choice for layoff. At the time of this conversation, Respondent employed four snap machine operators, including Miller. Of the four, only Miller suffered a layoff on this occasion. Antley said she would recall Miller when work increased.[2]

Early on the afternoon of September 13, Supervisor Antley called all six of Mini-Togs' Sleeper line inspectors, including Opal Deiter, Hazel Mayes, Brenda McHenry, Lottie Shaw, Irene Anderson, and Janice Reynolds, to her office where production Manager Willis (Buddie) Bradshaw was waiting. Bradshaw told the assembled employees that the Respondent was terminating them and shutting down the sleeper line. He stated that Mini-Togs' packing department would inspect the few remaining uninspected sleepers. Bradshaw also advised the six employees that he was releasing them immediately to enable them to qualify for unemployment benefits.[3]

Employee George Henry Ponsell Jr. saw the six sleeper line inspectors, as they passed through Mini-Togs' cutting department on the afternoon of September 13. Ponsell's supervisor, George E. Standifer, saw the six employees and expressed curiosity about what was happening. Standifer quickly disappeared and returned to where Ponsell and employee Ed Knighten were standing, in the cutting department. Standifer warned Ponsell and Knighten against talking about the Union, and being overheard. Standifer said that the six sleeper line inspectors were laid off ''[b]ecause they was talkin' Union.''[4]

According to Brenda McHenry, on September 14, her sister, Supervisor Sarah Hemphill, told her, in substance, that Respondent had terminated the sleeper line inspectors because McHenry and Deiter had attended a union meeting, and had laid Karen Miller off for the same reason. In her testimony, Hemphill denied making such remarks to McHenry.

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[2] I based my findings regarding Supervisor Antley's remarks to Karen Miller on September 13 on Miller's uncontradicted testimony.

[3] According to Brenda McHenry's testimony, Lottie Shaw was absent from work on September 13. However, Supervisor Antley testified that she summoned all six inspectors. Also, Production Manager Bradshaw testified that he spoke to all six inspectors in Antley's office on that date. I have credited Antley and Bradshaw.

[4] I based my findings regarding Standifer's remarks, upon employee Ponsell's testimony. I did so after carefully reviewing Ponsell's testimony and considering his demeanor while testifying, and doing the same regarding the contrary testimony of Standifer and Knighten.

On direct examination, Standifer recalled that there was a layoff on or about September 12, and that he observed people leaving the Respondent's plant about 1 or 1:30 p.m. Standifer also denied having any conversation with employees Ponsell and Knighten about the layoff or the reason for the layoff. However, on cross-examination, Standifer first contradicted his earlier testimony by denying that he was aware of a layoff, and then testified that he ''assumed they were laid off.'' Under further cross-examination, Standifer first denied discussing with anyone the reason for the departure of the six employees. Then, immediately after that flat denial, under close cross-examination, Standifer testified that he told employee Carey Johnson that the six employees were leaving because ''they were caught up on their work.'' These quick reversals in Standifer's testimony and his uneasiness as he testified on cross-examination cast serious doubt upon his reliability as a witness.

Knighten fatally impaired his credibility, when he flatly denied on cross-examination that he had discussed his testimony with either Respondent's counsel or Ed Hakim prior to appearance as a witness for the Respondent. I find it highly unlikely that Respondent would have proffered Knighten's testimony, on March 17, 1989, without previously asking him about his testimony. Knighten further impaired his credibility by an evasive response to a question regarding a telephoned request by Hakim on May 16, 1989, that Knighten remain at the plant until Hakim could arrive and discuss his testimony.

In contrast with Standifer and Knighten, Ponsell impressed me as being a candid witness, who had respect for the proceedings, and was providing his best recollection. Accordingly, I have credited Ponsell's testimony.

However, as I have explained at greater length below, in footnote 10, McHenry's credibility suffered serious damage when I received in evidence a signed union authorization card, after she had testified that Respondent's production manager had torn it up. Thus, I have serious doubt about the reliability of McHenry's testimony regarding her sister's remarks. This doubt, and the absence of corroboration, compelled me to reject McHenry's contradicted testimony regarding Hemphill's remarks during their meeting on September 14.

On the afternoon of Friday, September 16, Karen Miller, Opal Deiter, and Brenda McHenry came to Respondent's parking lot, near its plant.[5] They began passing out union authorization cards and union literature to Respondent's employees. It is undisputed that Supervisor Hemphill appeared and told the three to leave. Miller, Deiter, and McHenry testified in substance that Supervisor Hemphill asked McHenry what she was doing at the lot and then, after getting an answer, remarked that McHenry had already lost her job. According to Miller and Deiter, Hemphill also said that McHenry would cause Hemphill to lose her job. McHenry testified in substance that Hemphill warned that her sister's union activity would cause the other employees to lose their jobs. Hemphill denied making the remarks attributed to her by Miller, Deiter, and McHenry.

The taint which caused me to reject McHenry's testimony regarding Hemphill's remarks to her on September 14, also impaired Miller's and Deiter's credibility. For they corroborated McHenry's discredited testimony that the Respondent's production manager had torn up a signed union authorization card on September 16. Aside from the disputed and unreliable testimony of McHenry, Miller, and Deiter, there was no other testimony or other evidence attributing the asserted remarks to Hemphill during her confrontation with the union activists on September 16. Accordingly, I credited Hemphill's denial.

2. Analysis and conclusions

Section 8(a)(3) of the Act prohibits an employer from discriminating ''in regard to . . . tenure of employment or any term or condition of employment to . . . discourage membership in any labor organization.'' Where the record shows that an employer's opposition to union activity was a motivating factor in a decision to discharge or lay an employee off, the employer will be found to have violated the Act unless the employer shows that the discharge or layoff would have occurred even in the absence of the protected activity. *NLRB v. Transportation Management Corp*., 462 U.S. 393, 400, 403 (1983). Accord: *NLRB v. Delta Gas, Inc*., 840 F.2d 309, 313 (5th Cir. 1988). Where the employer's explanation for its action are pretextual—that is, if the reasons either did not exist or were not in fact relied on—the employer has not met its burden, and the inquiry is logically at an end. *Limestone Apparel Corp*., 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982); *Wright Line*, 251 NLRB 1083, 1084 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The required unlawful motivation may be shown not only where the employer takes adverse action against individual employees in retaliation for their union activities, but also where the employer takes adverse action against a group of employees, regardless of their individual sentiments toward union representation, to punish the employees as a group ''to discourage union activity or in retaliation for the protected activity of some.'' *ACTIV Industries*, 277 NLRB 356 fn. 3 (1985). The issue in such cases is the ''employer's motive in ordering the [adverse action] rather than . . . the anti-union or pro-union status of particular employees.'' *Birch Run Welding & Fabricating v. NLRB*, 761 F.2d 1175, 1180 (6th Cir. 1985). For, ''[w]here the central aim of mass layoff is to discourage union activity, the discharge is unlawful, even though neutral or anti-union employees suffer in the process.'' *Merchants Truck Line v. NLRB*, 577 F.2d 1011, 1016 (5th Cir. 1978).

The General Counsel contends that the Respondent's termination of the six sleeper line inspectors and its layoff of Karen Miller on September 13 were in reprisal for Miller's, McHenry's and Deiter's union activity. The Respondent urges rejection of the General Counsel's contention, arguing that the record does not show the required unlawful motive. Instead, Respondent claims that the record shows that business considerations caused it to lay Miller off and to terminate the six sleeper line inspectors. Applying the Board's doctrine set out in *Wright Line*, supra at 1084, and for the reasons set forth below, I find merit in the General Counsel's contention.

The record shows that on September 13 Respondent was aware that employees Miller, McHenry, and Deiter had attended the Union's meeting 5 days earlier and were supporting its organizing effort. The first inkling of the Respondent's awareness occurred on September 13, shortly after it had terminated the sleeper line inspectors. For, as McHenry, Deiter, and the other sleeper line inspectors were leaving the Respondent's plant, Supervisor Standifer told employees Ponsell and Knighten not to talk about the Union. Standifer added meaning to his warning, saying that the ladies got laid off for talking union.[6]

Standifer's warning reflected the Respondent's union animus and was likely to coerce its employees and impair their right to support the Union under Section 7 of the Act. I find, therefore, that by Standifer's warning, the Respondent violated Section 8(a)(1) of the Act.

From the foregoing, I find that the General Counsel has made a prima facie showing that the union activity of three of its employees provoked the Respondent to impose economic reprisals on them and four of their colleagues. I base my finding on the timing of Miller's layoff and the termination of the six sleeper line inspectors and the remarks of Supervisor Standifer showing that Respondent was aware of and hostile to McHenry's, Deiter's, and Miller's union activity.

[5] The General Counsel's witnesses, Miller, Deiter, and McHenry testified, that their encounter with Hemphill occurred around noon. According to Respondent's witnesses, Hemphill and Janice Johnson, the confrontation occurred about 2:30 p.m. However, as all agreed that it occurred on the afternoon of September 16, I found it unnecessary to resolve this issue of credibility.

[6] Hakim testified that he first learned of the Union's campaign on September 15, when he received employee Martin's signed authorization card. I find from Production Manager Willis Bradshaw's testimony that he showed Martin's authorization card to Hakim on September 16. In light of my assessment below, in fn. 13, at 16, that Hakim was not a reliable witness, and Standifer's remarks, I find that Hakim was aware that Brenda McHenry, Opal Deiter, and Karen Miller were union activists when he decided to lay them off along with the four other sleeper line inspectors.

The Respondent insists that union activity played no part in its decisions to lay Karen Miller off and terminate all six of its sleeper line inspectors. In support of its position, the Respondent offers economic explanations. However, the disclosures by Supervisors Standifer and Hemphill show that the union activity of employees Miller, McHenry, and Dieter motivated the layoff and the six terminations on September 13. Thus, there is ample ground for finding that the Respondent's explanations are pretextual. However, analysis of the Respondent's attempts to justify the adverse actions it pursued against Karen Miller and the six sleeper line inspectors provides further support for that finding.

Of the four snap machine operators assigned to her on September 13, Supervisor Erma Antley singled out Karen Miller for layoff on that date. Antley summoned Miller to her office and explained that Hakim had directed her layoff ''because the work was slow'' and because Miller had been absent 2 weeks before with the flu.[7]

Before me, Respondent has abandoned the explanation which Antley gave to Miller on September 13. In its posthearing brief, Respondent stated that Antley ''selected Miller because of her absences from work occasioned by the sinus problems which were aggravated when the Company printed gowns.'' This change of explanation suggested that Respondent believed that the excuses which it gave to Miller would not survive examination.

The Respondent relied on Supervisor Antley's testimony to support its explanation. However, for the reasons I have given above in footnote 7, and in light of Supervisor Standifer's revelations, I am reluctant to credit Antley's testimony regarding Miller's selection for layoff on September 13. However, analysis of Antley's testimony and the record as a whole, shows this proffered explanation to be wholly without merit.

According to Antley, she selected Miller for layoff because she was allergic to a dye the Respondent used in the manufacture of a gown, and at times was obliged to leave work because of her allergy. However, Supervisor Antley did not recall how many times Miller had left work because of the dye prior to September 13. She did remember that this phenomenon occurred about once per month when Respondent was manufacturing gowns. There was no showing that at the time of Miller's layoff the Respondent was using the offending dye or that it contemplated using it. Indeed, Antley conceded that as of September 13 the Respondent was about to start work on an order of sleepers for K-Mart, on which it would not use dye. Miller's allergy was not likely to interfere with her work for the immediate future.

Further, the Respondent did not show that the allergy caused Miller to be absent more than any of the other snap machine operators. The Respondent did not bother to offer its records to show that Miller's absences exceeded those of the other snap machine operators. Instead, it offered Supervisor Antley's unreliable testimony, which I have not credited. Thus, Miller's allergy did not provide a discernible basis for selecting her, rather than another snap machine operator, for layoff on September 13.

In sum, Antley's testimony and the infirmities in the Respondent's explanation strongly suggest that it was a hastily contrived effort to mask the real motive for Karen Miller's layoff on September 13. After perceiving that Miller's recent bout with the flu did not offer an effective explanation for its decision to punish her, the Respondent constructed a second pretext, which also missed the mark. Instead, I find that the General Counsel has amply shown that the Respondent selected Karen Miller for layoff to punish her for engaging in union activity, and to persuade other employees to distance themselves from the Union. Accordingly, I find that by laying Karen Miller off on September 13 the Respondent violated Section 8(a)(1) and (3) of the Act.

In analyzing Respondent's defense of its decision to terminate its six sleeper line inspectors, I first turn my attention to who made the decision and when. According to the testimony of Respondent's production manager, Willis Bradshaw, on direct examination, during the last week of August or the first week in September, Ed Hakim instructed him to lay off the sleeper line inspectors permanently. Bradshaw also testified on direct examination, that it was another week before he did anything about the layoff, and then he carried it out on a Tuesday, September 13. However, on direct examination, when counsel asked Bradshaw, ''[W]ere you aware of Union activity of any of those inspectors when you made the decision to lay them off?'' Bradshaw answered: ''No, sir.'' On cross-examination, Bradshaw agreed that he and Hakim had discussed the layoff for about 2 weeks, that Hakim made the decision at the end of August, and that Bradshaw carried out the decision on September 13.

In his testimony, Hakim consistently admitted that he made the decision to terminate the sleeper line inspectors. However, his testimony as to when he made the decision raised a significant issue of credibility. Initially, Hakim testified that he ''got with Mr. Bradshaw some time around the middle of August'' and decided to cut the sleeper line inspectors. A short time later, Hakim testified that, ''We decided to [terminate the inspection line].'' When I asked ''When?'' he answered: ''When I walked through the plant with Mr. Bradshaw, was about the middle to the end of August of '88.'' Later, on direct examination, Hakim agreed that his discussion with Bradshaw occurred at the end of August. On cross-examination, Hakim again agreed that he made the decision regarding the sleeper line inspectors ''[t]he last of August'' and then testified: '' I was trying to think of whether it was the third or fourth week.'' When I reminded Hakim of his earlier testimony in which he gave

[7] Antley testified that she laid Miller off. However, Miller's credited testimony showed that on September 13, Antley asserted that Ed Hakim had selected Miller for layoff. In a memorandum which Antley prepared on September 13, she stated that Miller was laid off and provided an explanation for her selection. However, Antley's memo did not assign responsibility for the decision to lay Miller off. In assessing Antley's credibility, I noted that on crossexamination she flatly denied ever having seen any of the Union's literature, and then testified that she ''went up an aisle [at the plant] one day and there was a piece laying on the table, but I didn't know what it was.'' At another point on cross- examination, she showed great reluctance to disclose when she had prepared a summary of the hours of layoff time for Karen Miller and the six sleeper line inspectors between May 2 and September 16, both dates inclusive. Indeed, she repeatedly failed to respond when I questioned her on this topic. These incidents, and my impression during cross-examination that 45 her denials of recollection were evasive expedients, suggested that she was not a frank witness. This impression strengthened, when I asked Antley how many times Miller went home from work because of her allergic reaction to a dye, suggested numbers, and received the answer: ''I don't recall.'' This answer from Miller's immediate supervisor, who assertedly, selected her for layoff because of an allergic reaction to the dye, castserious doubt on Antley's credibility regarding Miller's layoff. In contrast, Karen Miller testified in a straightforward, open manner. Accordingly, I have rejected Antley's testimony that she made the decision to lay Karen Miller off. Instead, I find that she carried out Hakim's instructions.

mid-August as the time of the decision to shut down the sleeper inspection line, he changed his testimony to: ''Early third week.'' I suggested: ''About the 18th?'' Hakim answered, ''Fifteenth to the 18th—17th—16th.'' Then, on redirect examination by Respondent's counsel, Hakim testified that it was September when he made the decision to terminate the sleeper inspection line. Within a few minutes, Hakim testified that he made the decision in August, ''[f]ifteenth, 16th, 17th.''

I find from Hakim's testimony that he made the decision to terminate the six sleeper line inspectors. However, the variations in Hakim's testimony regarding the date on which he made the decision precluded me from relying on it to make a finding as to when he made it.

According to Bradshaw's testimony on direct examination, it was at the end of August that he and Hakim first discussed shutting down the sleeper inspection line. Also, according to Bradshaw, he and Hakim thought about it for a couple of weeks, then, within a week, Hakim told him to go ahead, ''and it was another week before [Bradshaw] got around to doing it.'' If this chronology were credited, Bradshaw could not have terminated the six inspectors until sometime after September 13. This carelessness suggests that Bradshaw was improvising as he testified.

Another infirmity in Bradshaw's testimony was his failure to explain why he delayed the layoff until 5 days after the Union's meeting. After all, this was a layoff of six employees whose continued employment was, according to Bradshaw and Hakim, a needless expense. Supervisors Standifer's and Hemphill's disclosures that Respondent terminated the inspectors because of Deiter's and McHenry's union activity provided the explanation for the flaws in Bradshaw's testimony.

On September 13, Bradshaw told the six sleeper line inspectors that he was terminating them because business was slow and their services were unnecessary as the packing department was presently performing the inspection task. At the hearing before me, Hakim added a third reason, which Bradshaw neglected to mention on September 13. According to Hakim's testimony, the six sleeper line inspectors' practice of returning defective garments directly to the sewing machine operators deprived Supervisor Antley of opportunities to identify deficient producers. Hakim's belated offer of this third reason suggested that he was attempting to shore up what he perceived to be an inadequate explanation for the sudden termination of six employees, only 5 days after two of them had attended a union meeting.

Analysis of Bradshaw's explanation to the employees shows that it was an effort to obscure the Respondent's unlawful motive. First, the record showed that on previous occasions when business was slow Respondent 's practice was to lay the inspectors of f temporarily, pending an upturn in orders . On September 13, Bradshaw used a slowdown in business as a part of his explanation for terminating the sleeper line inspectors. However, in an effort to justify the permanent nature of the layoff, Bradshaw explained that Respondent was doing away with the sleeper line inspection positions because the packing department was inspecting the same garments. However, on the same day, the Respondent hired three new employees into the packing department and trained them to pack and inspect the garments the six terminated employees had been inspecting until 1:30 p.m., that same day. Neither Bradshaw nor Hakim made any attempt to place any of the six in the packing department and train them to pack.

Before me, Hakim asserted he knew nothing of the hiring of the three new employees. Yet prior to September 13, he had authorized the packing department supervisor to hire whatever help she needed to process a K-Mart order. Hakim's and Bradshaw's testimony was silent as to why neither he nor Bradshaw made any effort to relocate any of the six in the packing department before terminating them on September 13. Nor was there any showing that Hakim or Bradshaw suggested that the packing department supervisor consider three of the sleeper line inspectors for packing, training, and employment in her department on and after that date.[8] These omissions suggested that the Respondent was anxious to get rid of the six employees, and that the double inspection excuse was pretextual.

Hakim's testimony in support of the Respondent's explanation of the termination of the six inspectors defies credulity. According to Hakim, the sleeper line inspectors procedure of returning defective items directly to the sewing machine operators created an intolerable situation which surfaced in 1986, and got worse. In Hakim's words, ''[I]t became intolerable six months before [August].'' Also, according to his testimony, it was ''a very serious problem that was costing Mini-Togs thousands of dollars and it was keeping the sewing operators virtually untrained.'' Hakim testified that, without including the cost of the fabric involved, the employment of the six sleeper line inspectors was costing the Respondent ''about $6000 to $10,000 a month extra, minimum.'' Hakim also claimed that the Respondent received complaints about garments ''that I can hardly believe that Mini-Togs made.'' The solution to this expensive 2-year-old problem, which became ''intolerable'' in February, did not occur until 7 months later, on a date that happened to be only 5 days after two of the six inspectors had attended a union meeting. Absent from Hakim's story is any explanation of why he did not take this action in February, or at another juncture, before union activity surfaced among his employees.

Hakim's testimony raised other grounds for doubting his explanation. Thus, there was no showing that Hakim had ever broached the subject of deficient work with either Sewing Line Supervisor Erma Antley or with Production Manager Bradshaw. There was no showing that Respondent took any steps during the 2 years preceding August 1988 to correct the asserted shortcomings on the sewing line. Finally, there was no showing that Hakim instructed the inspectors to return defective garments to Antley instead of returning them to the sewing operators.

In sum, I find that Hakim's testimony did not help the Respondent's defense of its termination of the sleeper line inspectors. Indeed, analysis of his assertions revealed its pretextual nature, thus suggesting that there was another ex-

[8] On redirect examination, Hakim testified that Sabah Futayyeh, the packing department supervisor, would not have known about the permanent layoff of the six sleeper line inspectors because he told Bradshaw not to tell anyone about it. Yet, earlier on the same day, on cross-examination, Hakim denied telling Bradshaw not to say anything about the layoffs. However, I find it unnecessary to determine whether Futayyeh knew of the layoffs on or before September 13. The relevant fact is that there was no showing that the Respondent attempted to transfer any of the six sleeper line inspectors to Futayyeh's department.

planation for the terminations. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). Accordingly, I find that the Respondent has failed to rebut the General Counsel's showing that the six inspectors suffered termination of their employment because two of them had attended a union meeting. I also find that Respondent terminated the six employees to discourage other employees from engaging in union activity or otherwise supporting the Union. I find that by this conduct the Respondent violated Section 8(a)(3) and (1) of the Act.

I also find that, contrary to the General Counsel's contentions, the record did not support the allegations that by her remarks to employees on September 14 and 16 Sarah Hemphill created the impression that the Respondent was maintaining surveillance of its employees' union activities, or that she threatened plant closure, loss of jobs, or discharge because its employees engaged in union activities or otherwise supported the Union. I shall, therefore, recommend dismissal of these complaint allegations.

C. *Interference, Restraint, and Coercion*

1. Denial of access

About 3 p.m., on September 16, laid-off employees Karen Miller and Linda Robinson, terminated employees Brenda McHenry, Opal Deiter, and Hazel Mayes, and off-duty employees Alecia Dunn[9] and Juana Greenhagen were in Respondent's parking lot. They were there to pick up paychecks and to obtain the signatures of Respondent's employees on union authorization cards. Greenhagen approached employee Alfred Martin and asked him to sign a card. As Martin wrote on the card, Production Manager Willis Bradshaw approached, and asked him what he was doing. Martin explained that he was signing a union card.

Bradshaw asked if he could see the card, and reached out to take it. When he met no resistance, Bradshaw took the card. He told Greenhagen and her colleagues ''that they were no longer employees of Mini-Togs and they couldn't hand out literature in the parking lot and they was going to have to leave.''[10] The seven union supporters complied with Bradshaw's order.

Respondent argued that Bradshaw acted lawfully on September 16. In support of its contention, the Respondent offered the testimony of Bradshaw, Hemphill, and Hakim. Bradshaw testified that Respondent has a rule prohibiting permanently laid-off employees, exemployees, and other nonemployees from entering its plant or parking lot. He offered as reason for the rule the prevention of theft of tires, batteries, and other personal property from the employees' automobiles parked there. Bradshaw also testified that he has occasionally enforced that rule and a no-solicitation rule. Sarah Hemphill testified that the Respondent maintains a no-loitering rule. According to Hakim's testimony, since 1982 the Respondent has prohibited nonemployees from entering on its premises, including its plant and parking lot, and has prohibited solicitation on its premises.

Contrary to the Respondent's position, I find that Bradshaw ran afoul of Section 8(a)(l) of the Act on September 16 when he told discriminatees Deiter, McHenry, Miller, and Mayes, laid-off employee Robinson, and off-duty employees Greenhagen and Dunn that they could not hand out union literature in the Respondent's parking lot because they were no longer its employees. However, contrary to Bradshaw's remarks, for purposes of Section 7 of the Act, all seven were the Respondent's employees, and were entitled to hand out union literature on its parking lot. For prior to September 16, Respondent had not imposed any such rule on its employees. Indeed, Bradshaw admitted before me that the rule did not apply to employees on temporary layoff.

There was no showing that prior to September 16 the Respondent had ever enforced such a prohibition against any of its employees. Nor did it appear that the Respondent had told its employees about the rule invoked by Bradshaw. The Respondent's employee handbook, entitled ''Rules and Regulations,'' did not include such a rule. Bradshaw's testimony showed that Respondent never mentioned the rule to new employees. At the time of the incident, the rule was not posted on the Respondent's parking lot or anywhere else on its premises. Hakim testified that the Respondent had first posted the rule on the parking lot in 1982, using paper signs that were replaced by plastic signs in late 1986 or early 1987. According to Hakim, someone tore the signs down prior to September 16. He did not assert that the Respondent had taken any steps to put new signs up. That Hakim did not provide more specificity as to when the signs had come down, suggested that they had not been a matter of concern to him or to the Respondent. I find from these circumstances, and my impression that Hakim was not a candid witness with respect to the signs, that Respondent had no rule limiting its employees' access to its parking lot until Bradshaw made one up on September 16 to thwart union activity. I also find that the Respondent has not revoked Bradshaw's pronouncement. Accordingly, I find that by Bradshaw's conduct on that date the Respondent imposed a restriction aimed only at union activists to squelch their efforts to solicit support for the Union, and has continued to maintain that rule. By promulgating and maintaining that restriction, the Respondent has violated Section 8(a)(1) of the Act. *Model A Reproduction Corp*., 259 NLRB 555 fn. 3 (1981).

I also find that when Bradshaw asked what Martin was doing, the circumstances surrounding the question rendered it coercive. Three days before Bradshaw confronted Martin, the Respondent had violated the Act by terminating six sleeper line inspectors and laying off a seventh employee, in an effort to discourage union activity among its employees. Also, the immediate context in which the question arose was a further unlawful effort to discourage union activity among the Respondent's employees. I find, therefore, that Bradshaw's

[9] The Respondent's compilation of its records of permanent layoffs in 1988 showed that it permanently laid Alesia Dunn off on October 21. I find from the uncontradicted testimony of the General Counsel's witnesses that Dunn was at the parking lot to pick up a paycheck. From these circumstances, I have concluded that Dunn was an off-duty employee of the Respondent on September 16.

[10] The only substantial issue of credibility regarding the parking lot confrontation involving Bradshaw, concerned his disposition of the authorization card he took from employee Martin. General Counsel's witnesses Greenhagen, Miller, Deiter, McHenry, and Robinson testified that Bradshaw tore up the card. Bradshaw testified that he took the card and presented it to Hakim. At the hearing, I received the card in evidence, intact. These circumstances suggest that these five General Counsel witnesses acted in concert to embellish their testimony. The General Counsel has not offered any explanation that might rehabilitate their credibility. This apparent effort to assist the General Counsel's case has last serious doubt on the reliability for the five witnesses' testimony regarding other allegations in this case. My doubt is such that where issues of credibility have arisen I have not relied on their uncorroborated testimony.

question coerced Martin and impaired his right under Section 7 of the Act to engage in union activity, and thus violated Section 8(a)(1) of the Act.

During working hours on October 17, Hakim delivered an antiunion speech to the Respondent's employees at its plant.[11]The complaint alleged that on that date, Hakim threatened Respondent's employees with loss of employment through layoffs or plant closure if the Union's organizing drive succeeded. The General Counsel argued that Hakim's remarks included an implied threat of plant closure and loss of employment if the Respondent's employees selected the Union as their bargaining representative. The Respondent argued that Hakim's speech was free of any threat. I find that Hakim's speech included implied threats of economic reprisal, including plant closure, loss of employment, and termination if the Respondent's employees selected the Union as their exclusive collective-bargaining representative.

Under Section 8(c) of the Act, Hakim was free to express to the assembled employees his general opinion about unions or about the Union, and union adherence, as long as his remarks did not include a ''threat of reprisal or force or promise of benefit.'' According to the General Counsel, Hakim exceeded the bounds of Section 8(c) of the Act. In support of his position the General Counsel called attention to Hakim's repeated references to employers who closed down after their employees selected a union to bargain on their behalf, and his remark that a union had forced steel mills to shut down their domestic facilities and transfer operations overseas. The General Counsel argued that these assertions, without supporting evidence of the actual reasons for these shutdowns, suggested that ''the advent of a union equalled the end of the business.'' I agree. I also agree that Hakim impliedly threatened similar action when he told the assembled employees:

> If the union man is telling you, is telling you you've got nothing to lose, don't believe him. Ask some of the other factories; that aren't around any longer. You've got plenty to lose. Before most of you landed up, here at Mini Togs and Embroideries and Luv-Care, you were job hunting. I think you know what's out there. Especially in Monroe, Louisiana, a small Southern town. We opened this plant in Monroe with a plan for success. We did it. We are successful and we would like to always be here and give you jobs. We don't want to go back to contractors or overseas.

I have considered the above-quoted excerpt of Hakim's speech and appraised its message with the guidance of *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969). There, the Court recognized that an employer in addressing his employees on the subject of union representation may predict the economic consequences he believes unionization will have on his business.

> In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control [citation omitted]. If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion.

In his speech to the Respondent's employees on October 17, Hakim told of employers who closed their plants after unionization and of other employers who closed down their domestic facilities and shifted their operations overseas after their employees chose a union to represent them. Hakim thus suggested that unionization would endanger Respondent's business. He also reminded his listeners of the scarcity of work in Monroe before Respondent opened its plant business, and how Respondent had since been a fertile source of employment. He then suggested to the listening employees that unionization would cause the Respondent to contract out its work or move overseas. Absent from Hakim's remarks regarding these possibilities, was any attempt to show by ''objective fact'' that they were beyond the Respondent's control. The Respondent's termination of the six sleeper line inspectors and its layoff of Karen Miller in violation of Section 8(a)(3) and (1) of the Act, in September, strengthened the suggestion in Hakim's speech that if the employees continued to support the Union, they would jeopardize their employment at the Respondent's plant. In sum, I find that Hakim warned the employees that if they selected the Union as their bargaining representative the Respondent would shut down the Monroe plant and terminate their employment. By this warning, I find that the Respondent violated Section 8(a)(1) of the Act. *TRW-United Greenfield Div. v. NLRB*, 637 F.2d 410, 419 (5th Cir. 1981).

I also find that Hakim exceeded the bounds of Section 8(c) of the Act in the following portion of his speech to employees on October 17:

> In 1983 was the last time the union tried to get in here. At that point, we shut down a plastic pant line. Where's Alice Washington, raise your hand. Alice Washington was in that line. A couple of you others were. They said oh, they're shutting this line down just to scare us. They're not going to keep it closed. Four and one half years later and 26 employees less, those people, I guess are still waiting to come back here. But, that line's never been reopened.

In this portion of his speech, I find that Hakim was suggesting to his listeners that the Respondent would not shrink from discharging employees in response to the Union's current organizing drive. Further, the employees were to note that the Respondent was not bluffing. Employee Karen Miller's discriminatory layoff and the discriminatory termination of the six sleeper line inspectors in September showed the Respondent's readiness to use its power over jobs unlawfully to discourage union activity among its employees. I have little doubt that employees listening to Hakim were aware of the terminations and layoff, and from them gained the full import of his message.[12] I find, therefore, that by the portion

[11] I based my findings regarding Hakim's speech on a tape recording and a transcript of it, which I received in evidence on the parties stipulation. In view of the accuracy of the tape and the transcript, I have not relied on Alice Washington's testimony regarding this speech.

[12] The Board has recognized that when an employer engages in unfair labor practices directly involving several of its employees, during an organizing campaign additional employees are likely to learn of that action quickly. See, e.g., *Graham Architectural Products Corp*., 259 NLRB 1174, 1175 (1982). I

of his speech excerpted immediately above, Hakim restrained and coerced the Respondent's employees in violation of Section 8(a)(1) of the Act.

After Hakim had completed his speech, he permitted the assembled employees to go on a break. During that time, he distributed two handouts to the employees, one of which included a form bearing the following message, addressed to Union Representative James Pepitone: ''I did not understand what the Union Card meant when I signed it. Please cancel my Union Card and return it to me. There is no further need to contact me or discuss this matter.'' The form provided a space for the employee's signature. There was no showing that any employee asked Hakim or any other member of the Respondent's management for a withdrawal request or for help in revoking a signed union authorization card prior to October 17.

Hakim's spontaneous distribution of his withdrawal request form to Respondent's employees came in the wake of a speech in which he threatened economic reprisals if the employees selected the Union as their collective-bargaining representative. Employees were likely to accept the withdrawal form, mindful of Hakim's warning that continued support for the Union would provoke the Respondent into shutting the plant down or reducing the work force. Thus coerced, employees would be prone to surrender their right under the Act to support a union. In these circumstances, I find that Hakim violated Section 8(a)(1) of the Act by soliciting the Respondent's employees to abandon the Union. *Gupta Permold Corp*., 289 NLRB 1234, 1249 (1988).

D. *Eric Coler's Discharge*

1. The facts

At the time of his discharge on September 19, Eric Coler, a janitor, had been in the Respondent's employ for 1 month or 6 weeks. On the afternoon of September 16, at the request of employee Juana Greenhagen, Coler signed a union authorization card at the entrance to the Respondent's plant abutting on the parking lot. As Coler received the card, Deiter saw Production Manager Willis Bradshaw, in the building, on his way to the entrance, looking toward Coler. When Bradshaw reached the entrance, Coler accompanied him into the parking lot. Soon after their arrival in the parking lot, Bradshaw seized Alfred Martin's signed authorization card, and ordered the union activists to leave. Three days later, Hakim discharged Coler.

2. Analysis and conclusions

That Coler signed an authorization card for the Union was undisputed. The record showed the Respondent's hostility toward employees identified as union supporters. I have also found that the Respondent's union animus had motivated it to discriminate against such employees and their colleague's. Yet the record was unclear as to whether Hakim had learned of Coler's signed authorization card, or had at least formed a suspicion that Coler had signed such a card before he decided to discharge him.

According to Opel Deiter, as Bradshaw came toward the entrance of the Respondent's facility on the afternoon of September 16, Bradshaw saw Coler sign an authorization card on September 16. Deiter also testified that Coler accompanied Bradshaw into the parking lot. Bradshaw testified only that Coler was standing in the entrance and accompanied him into the parking lot. Neither counsel for the Respondent nor counsel for the General Counsel asked Bradshaw whether he saw Coler sign an authorization card or saw Coler with Greenhagen and Deiter on September 16. Thus, Deiter's testimony stands uncontradicted. I find, therefore, that on September 16 Bradshaw observed Coler signing a union authorization card.

The record showed that Bradshaw and Hakim were the Respondent's top management officials at the plant, that they regularly conferred about the Respondent's plant operations, and that Bradshaw reported matters concerning the plant to Hakim. From this close business relationship and their well-demonstrated concern about the Union's attempt to organize the Respondent's employees, I find that when he gave Martin's signed union card to Hakim on September 16, Bradshaw mentioned Coler's signature card.[13]

Three days after learning that Coler had signed a union card Hakim discharged him. The timing of the discharge so soon after Hakim had identified Coler as a prounion employee and Hakim's demonstrated willingness to resort to unfair labor practices, including discrimination, to oppose the Union, supplied a prima facie showing of unlawful motive.

The Respondent argued that union animus played no part in Hakim's decision to discharge Coler. In support of this contention, Respondent offered Hakim's testimony that he discharged Coler ''for continuous harassment [of] another fellow employee and calling her a fat ass—telling her to move her fat ass, and calling her a fat doughnut.'' There was no showing that Coler had engaged in other misconduct or had performed his work in an unsatisfactory manner during his brief employment by the Respondent. In a further effort to assist the Respondent's explanation, Hakim testified that the recency of Coler's employment warranted the use of discharge rather than lesser punishment. I find no merit in the Respondent's contention.

On September 19, employee Donita Key complained to Hakim that while sweeping near her work station Coler had told her: ''Move your ass out the way.''she also reported, tearfully, that a fellow employee had told her that Coler had referred to her as: ''Doughnut and elephant.'' According to Hakim, after confirming Key's complaints by questioning her informant, he summarily discharged Coler for harassing a fellow employee.

The record suggested that Coler's discharge for verbally harassing a fellow employee was a substantial departure from the Respondent's policy regarding such misconduct. The Respondent's ''Rules and Regulations,'' which prohibit employ-

also note that in construing otherwise ambiguous remarks by an employer to employees regarding the adverse economic impact of union representation on its business the Board will view them in the context of other unfair labor practices and find them to be unlawful threats. E.g., *Dutch Boy, Inc*., 262 NLRB 4, 6–7 (1982).

[13] According to Hakim's testimony, he knew nothing of Coler until September 19, Hakin flatly denied having heard anything from Bradshaw about Coler's attitude toward the Union or about his signature on a union card. Bradshaw's testimony was silent on this topic. However, I have found that Bradshaw observed Coler signing a union card on September 16. I have also found that on the same day, Bradshaw had an opportunity to report his observation when he showed employee Martin's authorization card to Hakim. These findings and my considerable doubt about the reliability of Hakim's testimony, as discussed earlier in this decision, persuaded me to reject his testimony regarding his knowledge of Coler's signature on a union card.

ees from making ''provocative statements,'' did not prescribe discharge for a first offense. There was no showing that prior to September 19, any other employee of the Respondent had suffered discharge for verbally harassing a fellow employee. More important, Hakim testified that if ''a long standing employee'' had been the offender he ''would have probably put him on a probationary period or tried to work something out.'' The record showed that in April or May, after learning that employee George Ponsell had harassed his estranged wife, who was also employed at the same plant, Hakim only warned him. One week later, after Ponsell had again harassed his wife, Hakim gave him a final warning.

Hakim did not help the Respondent's cause when he testified that he had inflicted discharge on Coler because he had been an employee for only 4 or 6 weeks. For nowhere in the record had the Respondent shown that it had maintained the policy Hakim had suggested in this testimony. Nor did the Respondent show that before September 19 it had considered length of employment in assessing punishment for employee misconduct. I find from Hakim's and Ponsell's testimony that when Hakim warned him about harassing his wife Ponsell had been in Respondent's employ for only approximately 1 year. These circumstances suggest that Hakim presented this explanation in an attempt to disguise the real reason for Coler's discharge.

In sum, the Respondent has not shown that it would have discharged Coler for his uncomplimentary remarks to, and regarding, employee Key, even if he had not signed a union card. Thus, the General Counsel's prima facie case stands unrebutted. Accordingly, I find that by Hakim's discharge of Coler on September 19, the Respondent violated Section 8(a)(3) and (1) of the Act. *Wright Line*, 1083, 1089 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

E. *Patricia Gayden's Layoff*

1. The facts

The Respondent hired Patricia Gayden as a presser in July. However, when pressing work was slow, Respondent employed her as a packer. Sabah Futayyeh, who supervised packing and pressing, was Gayden's supervisor.

Gayden attended a union meeting on September 8, at which time she signed a union authorization card. Gayden was also a member of the Union's organizing committee, at the Respondent's plant.[14]

On October 13, the Respondent laid of f Gayden and seven other pressers for lack of work. On the previous day, Supervisor Futayyeh had singled Gayden out and requested that she return to work on Monday, October 17. Gayden did not return to work until October 18. On that day and on October 19, Gayden worked as a packer on an order for K-Mart.[15]

About 7:30 a.m., on October 20, Gayden and other union supporters distributed a prounion flyer outside of the Respondent's plant, to arriving employees. At the bottom of the flyer were the signatures of the organizing committee members, including Patricia Gayden. Shortly after 8 a.m., Gayden was on the plant's production floor. She observed Supervisors Futayyeh and Antley looking at a copy of the flyer and occasionally looking from the flyer to one of the employees whose signature appeared on it. At one point, the two supervisors gazed from the flyer to Gayden. Shortly, the two supervisors left the plant floor.[16]

I find from Gayden's credible testimony that soon after she had disappeared from the plant floor Futayyeh came to Gayden and, without providing any explanation or reason, told her to take the break coming at 9:20 a.m., clock out at 9:30 a.m., and go home. Gayden told Mattie Heckard of Futayyeh's instruction. I find from Gayden's unchallenged testimony, that Heckard said that there was ''plenty of work.'' As instructed, Gayden clocked out. Respondent recalled Gayden on January 3, 1989, and she returned to work on the following day.

2. Analysis and conclusions

The General Counsel has shown that approximately 2 hours after Gayden had openly supported the Union, by distributing a prounion flyer near the plant, Respondent laid her off. In the interim, her immediate supervisor, Futayyeh, had obtained a copy of the flyer showing Gayden's signature and had identified here as a leading union activist. This short sequence between Futayyeh's discovery and Gayden's layoff raised the spectre of another violation of Section 8(a)(3) and (1) of the Act. The Respondent's previous resort to unlawful discharges and layoffs to rid the plant of employees whom it had identified as union supporters, and its other unfair labor practices found above, provided buttressing for the General Counsel's prima facie showing that Gayden's layoff was in reprisal for her union activity, and therefore violated the Act.

According to Supervisor Futayyeh, on October 20, her department completed its work on an order for K-Mart, and she laid everyone off. I have found from Gayden's uncontradicted and credited testimony, that at that time, floor girl Mattie Heckard told her there was ''plenty of work.'' The Respondent called Heckard as its witness, after Gayden had testified. However, the Respondent's counsel did not ask Heckard about this remark. This omission suggested that her testimony would not have assisted its defense.

Gayden testified that she was the only presser Futayyeh laid off on October 20. The record did not show that any other employee received a sudden, unheralded layoff notice from the Respondent on that date, 1 hour and 20 minutes after the 8-hour workday had begun. The Respondent did not offer any explanation for this extraordinary circumstance.

[14] I based my findings regarding Gayden's employment and union activity on her testimony.

[15] Gayden had difficulty remembering details regarding her layoff on October 13, and her return to work a few days later. In contrast, Supervisor Futayyeh seemed to have a strong recollection regarding that layoff and the circumstances leading up to Gayden's return to work on October 18. I also noted that the Respondent's daily attendance records, which I received in evidence, supported Futayyeh's testimony regarding Gayden's return to work on that date. Accordingly, where their testimony conflicted regarding when Futayyeh spoke to Gayden about returning to work, when Gayden was scheduled to return, and when she actually returned, I have relied on Futayyeh's testimony.

[16] Futayyeh testified that when she decided to lay Gayden off on October she was not aware of Gayden's prounion sentiment. However, Futayyeh's testimony left unchallenged Gayden's testimony regarding Futayyeh's and Antley's actions on the plant floor on the morning of October 20. In contrast with other portions of her testimony, which I have rejected, Gayden testified about her observations of Antley and Futayyeh with certainty, and in a frank manner. Therefore, I have rejected Futayyeh's denial and credited Gayden in this regard.

There was no attempt to explain Futayyeh's failure to announce the layoff at the end of the previous workday. In sum, I find that the Respondent has failed to provide an adequate explanation of the timing and suddenness of Gayden's layoff on October 20. Finally, the Respondent has not substantiated Futayyeh's excuse for laying off Gayden.

I find from the General Counsel's unrebutted and convincing showing that the Respondent laid Gayden off on October 20, because it identified her as a leading union advocate. Accordingly, I further find that by this discriminatory layoff, the Respondent violated Section 8(a)(3) and (1) of the Act.

F. *Alice Faye Washington's Discharge*

1. The facts

As of October 31, when, according to its records, the Respondent discharged her, Alice Faye Washington had been in its employ for almost 12 years. Washington was a sewing machine operator on the sleeper line. Irma Antley was her immediate supervisor. Prior to October 31, the Respondent had never disciplined Washington.

Washington attended the Union's meeting on September 8, where she signed an authorization card. Thereafter, she encouraged fellow employees to attend union meetings, and distributed union literature. Washington was a member of the Union's organizing committee. On October 20, she distributed a prounion flyer bearing her signature immediately under Patricia Gayden's.[17]

In his antiunion speech to the Respondent's employees on October 17, Hakim singled Alice Washington out three times for mention. First, Hakim called Washington's name out when he recalled the termination of a line of 26 employees 4–1/2 years earlier, in the face of a union organizing campaign. He called out: ''Where's Alice Washington, raise your hand. Alice Washington was in that line.''

The second mention of Alice Washington came in a discussion of the significance of signing a union card, as follows:

> Remember, you should not sign the card unless you are completely willing to accept all the obligations and consequences of the union membership and representation by the union. I hope I've made myself clear on this point. The very ones that are trying to get you to sign cards might be a union representative and you might have to answer to, be Alice Washington.

In his final reference to Alice Washington, Hakim recalled the circumstances under which he had hired her, over 11 years ago, as follows:

> We try to hire people that social workers bring us. They have committed murder, and served time in prison, which we have a couple here. I know one, right Alice Washington? Yes, if she asked me to sign a union card, I would probably sign one too.

As found above, on October 17, following his antiunion speech, Hakim distributed a form to be used by employees to revoke their union authorization cards. When he came to Washington's work station, he offered a copy of the form to her, and asked her to read it. She rejected the form, saying she had already seen them and did not need one. Hakim responded: ''Well, you probably need four or five of them.'' Washington grinned and took his remark lightly. Hakim smiled and walked away.

On the morning of October 28, when Washington returned to her work station, after a break, she found an antiunion handbill on her sewing machine. She picked it up, glanced at it, and asked who had put it there. Employee Juana Greenhagen and one other employee answered, naming employee Carol Coppel. Washington screamed and hollered: ''You f—in' whores better stop putting these papers on my table unless I ask you for one.''[18]

I also find from Mattie Heckard's testimony that at about 12:30 p.m., on that same day, Washington erupted again near Heckard's work station, while reading an antiunion pamphlet. She yelled: ''These are a bunch of Goddamn lies.''

Sewing machine operator Myrlene Duart, who had passed out copies of the antiunion pamphlet, heard Washington's harsh language. Washington's reference to the distributors of the antiunion flyer as ''f—in whores'' and to its contents as ''f—ing lies,'' upset Duart to the point that she complained to Supervisor Erma Antley, on that same day.[19]

On the afternoon of October 31, Supervisor Antley instructed Washington and six other employees to go to Hakim's office. The employees congregated outside of Hakim's office and entered one at a time. Inside the office were Hakim and his attorney, David Hagaman. The latter advised each employee that the sole purpose of interviewing her ''was to secure facts and information.'' He also assured each that she was free to discontinue the interview and leave without fear of reprisal. Hagaman presented each employee with a form setting out the terms of the interview in detail, and asked each to sign on the bottom of the form. Hagaman questioned each employee regarding Washington's conduct on October 28.

In her signed statement, employee Mattie Heckard told Hagaman and Hakim: ''At morning break, I heard Alice say to Carol, 'You f—king whores . . . don't be putting shit on my machine.''' Heckard also stated that she had heard Washington referring to the handout's contents as ''a bunch of Goddamn lies.''

Hope Webster gave a statement corroborating Heckard's. She added that Washington referred to the handout's contents as ''bullshit.''

Employee Duart gave a statement consistent with her complaint on October 28. She asserted that Washington read the antiunion flyer and described its contents as ''f—ing lies'' and ''lies.'' Duart also told Hakim and Hagaman that Washington stood up at lunch on October 28, and loudly described those employees, who had distributed the antiunion flyer as ''f—king whores.''

[17] I based my findings regarding Washington's employment history and her union activity on her undisputed testimony.

[18] Washington testified, in substance, that she did not use any improper language when she complained about the antiunion handbill at her work station. However, while testifying about this incident, Washington seemed to be carefully choosing her words. In contrast to Washington and the other witnesses, Mattie Heckard seemed to have the best grasp of what happened and what Washington's reaction was. Heckard also impressed me as being a conscientious witness, who was providing her full recollection. Accordingly, I based my findings regarding Washington's remarks upon Heckard's testimony.

[19] I have credited Duart's uncontradicted testimony regarding her reaction to Washington's remarks.

Three employees provided statements asserting that they did not hear Washington using profanity toward anyone. Employee Glenda Coleman told Hagaman and Hakim that she did not hear Washington use profanity when she instructed employee Coppel to stop putting things on her desk. Coleman also recalled that at lunchtime, Washington referred to the contents of the antiunion flyer distributed earlier that day, as a ''bunch of Goddamn lies.''

Employee Vicki M. Blanton's statement agreed that Washington did not use profanity when she asked Coppel not to put literature on her desk. She also asserted that during lunch, on the same day, she heard Washington refer to the antiunion handout, saying: ''This, is bullshit and a bunch of f—king lies.''

Juana Greenhagen stated that she worked from 9:30 to 11:30 a.m. on October 28, and did not hear Washington use profane language.

When Washington came into Hakim's office, she refused to sign the statement of her right to refuse to participate in the investigation. Hakim invited Washington to ''get down to this little incident that happened on Friday.'' Washington asked, ''What little incident?'' Hakim said ''the cursing and the profane language.'' Washington professed ignorance of any such occurrence. When Hakim said he had witnesses, Washington replied that she did not know who they might be, and did not care to know, because they had lied. After Washington refused to answer questions, Hakim told her to leave the Respondent's plant and not to return until she had decided to answer his questions.

By letter dated November 3, Hakim notified Washington that because she ''used profane, cursing and defamatory language in the presence of and about some of the company's employees'' and because she ''failed to cooperate in the investigation, [he] suspended [her] from work until further notice.'' In his letter, Hakim offered to reduce the punishment if Washington satisfied specific conditions.

Hakim's proposal was as follows:

> I have decided that on the condition you give us your version of the facts, and also publicly apologize to the ladies you called ''f—ing w—s,'' you will be suspended for thirty days. At the end of that period you may return to work on a probationary basis on the condition that if you use profane, cursing or defamatory language to any employee on company property within six months, you will be terminated.

Hakim urged Washington to accept his proposal, ''because the company does not want to lose an employee like you who has a long history of valuable service to the company.'' He also warned that if she rejected his offer, the Respondent would convert her suspension to a discharge, effective November 10.

In a letter dated November 9, Washington rejected Hakim's proposal and again denied the alleged misconduct attributed to her. Finally, in a letter dated November 17, Hakim afforded her three business days to reconsider his proposal. He also stated that if she did not reply her suspension would become a discharge. Washington did not reply. Thereafter, the Respondent did not offer reinstatement to Washington.[20]

The record showed that the Respondent's employees regularly, on a daily basis, have used profane language such as ''son-of-a-bitch,'' ''mother f—ker,'' ''whore'' and other unsavory language, in the plant, in front of supervisors, without fear of punishment.

2. Analysis and conclusions

The General Counsel contended that the Respondent violated Section 8(a)(1) and (3) of the Act by terminating Alice Faye Washington on October 31 because she was a union activist. According to the Respondent, union activity had nothing to do with Hakim's decision to suspend her on October 31, and his subsequent decision to discharge her. Instead, the Respondent urged that Washington's reference to employees as ''whores'' and other profane language motivated Hakim. I find merit in the General Counsel's contention.

Alice Faye Washington was a leading union supporter. After attending a union meeting on September 8, she encouraged fellow employees to attend such meetings. Washington belonged to the Union's inplant organizing committee. On October 20, she stood outside the Respondent's plant distributing a union handbill, on which her signature appeared.

By October 17, Hakim was aware of Washington's leading role in the union organizing campaign. On that date, he singled Washington out three times for mention in his antiunion speech to the Respondent's employees. In one such reference, he pointed out that 26 of her colleagues had suffered discharge in the course of a union organizing campaign at the Respondent's plant in 1983. In each of the two remaining references to Washington by name, Hakim called attention to her union activity. On that same day, when he offered Washington a form to withdraw her authorization card from the Union, he jokingly remarked that she probably could use four or five. Hakim also admitted that on or about October 20 he saw the Union's handbill bearing Washington's signature. Finally, on October 31, in the course of investigating Washington's asserted misconduct, Hakim learned of her outspoken rejection of an antiunion flyer, which had echoed his sentiment.

There can be little doubt that Hakim was ired by Washington's persistent union activity. During the weeks leading up to his decision to suspend Washington, Hakim had used threats of economic reprisal, layoffs, and discharges in his effort to eradicate support for the Union among the Respondent's employees. Hakim's hostility to the Union and the timing of his decision to suspend Washington, on the very day he had obtained details of her outspoken rejection of his antiunion views, are the final ingredients in the General Counsel's prima facie showing that her union activity motivated that decision.

Here, in a plant where obscenities flowing from the employees were countenanced by management on a daily basis, Hakim suspended, and then discharged an employee of almost 12 years' service, asserting as ground her use of obscene language. He claimed that he took this unusual step because she directed an obscenity at specific employees. The

[20] I based my findings regarding the events on and after October 31, on Washington's and Hakim's testimony, and the relevant exhibits received in evidence.

Respondent has not shown any instance in which an employee received any discipline for similar misconduct. Nor has the record shown any instance in which such misconduct occurred. Given the free usage of obscene language in the Respondent's plant, I find it unlikely that the language which Hakim referred to when he explained his reasons for suspending and then discharging Washington, would have provoked him to do either had she not been an outspoken union activist.

However, in resolving issues arising out of Hakim's decisions regarding Washington on and after October 31, I have considered an alternative basis for finding them unlawful. I have looked to the Board's policy regarding an employee's right to the protection of the Act while engaged in conduct enumerated in Section 7 of the Act, where objectionable speech accompanies such conduct. The Board has recognized ''that obscenities uttered by an employee as part of the *res gestae* of concerted protected activity were not so flagrant or egregious as to remove the protection of the Act and warrant the employee's discipline.'' *Postal Service*, 250 NLRB 4 (1980).

Applying the Board's policy here, I find that Washington was a strong union advocate, exercising her right, in concert with other employees, under Section 7 of the Act, to show that support when confronted with antiunion literature. She was not in a drawing room, nor in a social gathering, when she received what she considered obnoxious propaganda. She was in a factory where she and her fellow employees used the rough language of the street, without management interference. She was voicing her disapproval of the literature and the employees, who advocated its message, when they distributed it to Washington and others. I also find that the obscenities she used, when she voiced her rejection of the antiunion flyer's contents, accompanied the exercise of the same right protected by Section 7 of the Act. In both instances, they were part of the res qestae. Washington's use of obscenities in these circumstances did not render her unfit for further employment.

In sum, I find that Hakim seized on Alice Faye Washington's use of obscene language on October 28, as a pretext for ridding the Respondent's plant of an outspoken union advocate, and thereby violated Section 8(a)(3) and (1) of the Act. However, even if her union activity did not motivate him, I would find that by discharging Washington on October 31, for using such language when she did so in expressing support for a labor organization, Hakim violated Section 8(a)(1) of the Act. *Coors Container Co*., 238 NLRB 1312, 1320 (1978).

CONCLUSIONS OF LAW

1. By threatening employees with discharge, by informing them that other employees had lost their jobs because of their union activities, by promulgating and enforcing a rule prohibiting union solicitation and distribution by off-duty employees on its premises during nonworking time, by interrogating employees regarding their union activity, by threatening its employees with layoffs or plant closure if they selected a union as their bargaining representative, and by soliciting its employees to withdraw their signed authorization cards from the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

2. By laying off Karen Miller and Patricia Gayden and by discharging Irene Anderson, Opal Deiter, Hazel Mayes, Brenda McHenry, Janice Reynolds, Lottie Shaw, and Alice Faye Washington, the Respondent violated Section 8(a)(3) and (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid-off employees Karen Miller and Patricia Gayden, both of whom it has since recalled, it must make them whole for any loss of earnings and other benefits they may have suffered as a result of this discrimination against them, plus interest, as provided below. Having discriminatorily discharged employees Irene Anderson, Opal Deiter, Hazel Mayes, Brenda McHenry, Janice Reynolds, Lottie Shaw, Eric Coler, and Alice Faye Washington, the Respondent must offer them reinstatement and make them whole for any loss of earnings and benefits they may have suffered as a result of that discrimination in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also recommend that the Respondent be required to remove from its files any references to Eric Coler's discharge or to Alice Faye Washington's discharge, which I have found violative of the Act, as set forth above, and notify these employees, in writing, that it has done so and that it will not use these discharges against them in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondent, Mini-Togs, Inc.; Luv-N-Care, Inc.; and Embroideries, Inc., a single employer, Monroe, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in and support for or activities on behalf of United Steelworkers of America, AFL–CIO–CLC, or any other labor organization, by discriminating in any manner against any of its employees in regard to their hire and tenure of employment or any other term or condition of employment because of their union membership, sympathies, or activities.

(b) Coercively interrogating employees about their union membership, activities, or sympathies.

(c) Threatening discharge, layoff, plant closure, or other reprisals because its employees support or select United Steelworkers of America, AFL–CIO–CLC, or any other a labor organization, as their collective-bargaining representative.

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Soliciting employees to withdraw their signed authorization cards from United Steelworkers of America, AFL–CIO–CLC or from any other labor organization.

(e) Promulgating, maintaining, or enforcing a rule prohibiting off-duty employees from engaging in solicitation or distribution on its premises, during nonworking time, on behalf of United Steelworkers of America, AFL–CIO–CLC, or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Irene Anderson, Opal Deiter, Hazel Mayes, Brenda McHenry, Janice Reynolds, Lottie Shaw, Eric Coler, and Alice Faye Washington immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision, plus interest.

(b) Make whole Karen Miller and Patricia Gayden for any loss of pay and other benefits they may have suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision, plus interest.

(c) Remove from its files any references to the unlawful discharges, and notify the employees in writing that this has been done, and that the discharges will not be used against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Monroe, Louisiana, copies of the attached notice marked ''Appendix.''[22] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board''shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discourage membership in and support for or activities on behalf of United Steelworkers of America, AFL–CIO–CLC, or any other labor organization, by discriminating in any manner against any of our employees in regard to their hire and tenure of employment or any term or condition of employment because of their union membership, sympathies, or activities.

WE WILL NOT coercively interrogate employees about their union membership, activities, or sympathy.

WE WILL NOT threaten discharge, layoff, plant closure, or other reprisals because our employees support or select United Steelworkers of America, AFL–CIO–CLC, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT solicit employees to withdraw their signed authorization cards from United Steelworkers of America, AFL–CIO–CLC or from any other labor organization.

WE WILL NOT promulgate, maintain, or enforce a rule prohibiting our off-duty employees from engaging in solicitation or distribution on our premises, during nonworking time, on behalf of United Steelworkers of America, AFL–CIO–CLC or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Irene Anderson, Opal Deiter, Hazel Mayes, Brenda McHenry, Janice Reynolds, Lottie Shaw, Eric Coler, and Alice Faye Washington immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them, plus interest.

WE WILL make whole Karen Miller and Patricia Gayden for any loss of pay and other benefits they may have suffered as a result of the discrimination against them, plus interest.

WE WILL remove from our files any reference to the unlawful discharges and notify the employees in writing that

we have done this, and that the discharges will not be used against them in any way.

MINI-TOGS, INC.; LUV-N-CARE, INC.; AND EMBROIDERIES, INC., A SINGLE EMPLOYER